



October 2, 2020

The Hon. Eugene Scalia, Esq.
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

RE: RIN 1210-AB91: Proposed Rule, Fiduciary Duties Regarding Proxy Voting and Shareholder Rights

Dear Secretary Scalia:

Thank you for this opportunity to offer my comments on this Proposed Rule from your Department's Employee Benefits Security Administration (EBSA). The Administration should be lauded for providing much-needed regulation over how pension fiduciaries bound to the directives of the Employee Retirement Income Security Act (ERISA) vote proxies on behalf of their plans' beneficiaries.

An important theme of this ruling, I believe, is that pension funds must not employ the practice of automatic voting (robo-voting) offered by a proxy advisor if the proxy resolution being voted is a controversial issue or non-pecuniary measure. These issues often arise within the context of environmental, social, and governance (ESG) investment biases. As I alluded to in a previous letter to your Department concerning its earlier ESG investing Proposed Rule, plan fiduciaries should be barred from automatically voting certain proposals pertaining to investment selection "unless those selections can be proven to generate returns that are expected to be on par with, or greater than, traditional investment selections that use financial (i.e., pecuniary) criteria that is universally accepted". I noted further, "If people are willing to pay more or even buy an underperforming fund because it saves the whales, fantastic. But that is not acceptable for pension plans."

While this Proposed Rule mentions automatic voting in passing, I hope this issue can be further codified in the actual text of a final version of the rule. It is essential that pensioners have line of sight into the proxy votes affecting their retirement accounts. Unfortunately, robo-voting refuses these plan participants and their families this necessary clarity and appropriate disclosure. That said, if the Department judiciously restricts or vigorously reforms this voting practice, that would be an extremely valuable step taken for pension participants.

A separate concern arises in the context of due diligence. As the Proposed Rule specifies, the Department endeavors to mandate pension plan fiduciaries furnish a cost-benefit analysis for the proxy votes they cast. But if the Department continues to allow ERISA-regulated plan fiduciaries to outsource their voting to proxy advisory firms, who then robo-vote shares on their behalf, how possibly could that cost-benefit requirement hold? There have been many cases where companies see a large share of their votes cast minutes or hours after a proxy advisor's recommendation is submitted. It is impossible to provide the desired cost-benefit analysis in that timeframe.

Finally, in the spirit of proper diligence, I reaffirm my belief that, if a controversial or contested issue is up for a proxy vote, automatic voting should be prohibited. That way, pension beneficiaries can be certain that the votes cast on their shares are pledged with their true and pecuniary interests.

I appreciate all the effort the Department, and especially the EBSA, have put into this Proposed Rule. Thank you again for considering my thoughts on this important issue of proxy voting and shareholder rights. Should this rule be finalized, which I hope it will be, it will encourage additional scrutiny of influential proxy advisors and their voting services, while providing needed and important protections to retirement savings.

Respectfully,

A handwritten signature in black ink that reads "Steve Diorio". The signature is written in a cursive, slightly slanted style.

Stephen Diorio
Executive Director
Revenue Enablement Institute

CC: Assistant Secretary Jeanne Klinefelter Wilson
Employee Benefits Security Administration
Department of Labor